IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ITHACA VENTURES k.s. and ITHACA DEVELOPMENT, LLC, Plaintiffs, v. NINTENDO OF AMERICA INC. and NINTENDO CO., LTD., Defendants.	C.A. No. 13-824-GMS

DECLARATION OF PETER LUTZ IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SANCTIONS PURSUANT TO FED R. CIV. P. 11

I, Peter Lutz, declare as follows:

1. I am a named inventor of U.S. Pat. No. 6,624,802 (the '802 Patent), which is asserted in the above-captioned action. I am the co-founder and managing director of Ithaca Ventures k.s.. I have worked in the automotive industry for over 20 years. This work included direct participation in vehicle launches as a developer and supplier of specialized machines. For the last four years I have been involved in the development and promotion of specialized inductive and optoelectronic sensor technology.

Efforts to License Technology to Nintendo

2. In 1999 I contacted Nintendo of America, Inc. ("Nintendo America") to present the technology of the '802 Patent and to gauge their interest in licensing. On May 18, 1999, I called Nintendo America and was connected to Leef Thomson. I described the technology to Mr. Thomson and asked whether I could send additional materials regarding the invention.

Mr. Thomson directed me to Nintendo America employee Sandy Hatcher, who I emailed that same day, referencing my conversation with Mr. Thomson, offering to discuss an license arrangement with Nintendo, and enclosing the additional materials including information regarding Application No. PCT/EP98/01216 (the PCT '216 Application).

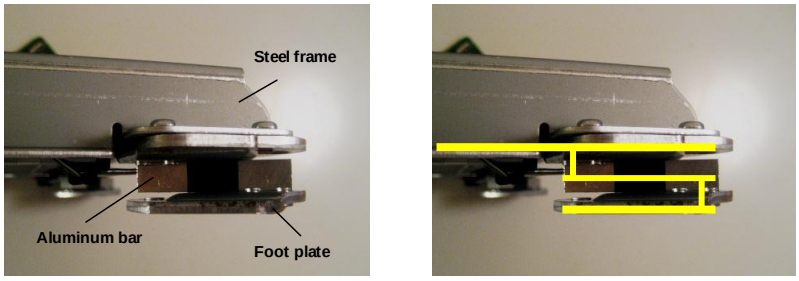
3. On May 20, 1999, Ms. Hatcher responded that Nintendo personnel had reviewed the proposal but "at the present time are not interested in licensing this product." I then contacted Nintendo Co Ltd. ("Nintendo Japan"), again to present the technology of the '802 Patent and to gauge their interest in licensing. On May 27, 1999, I called the offices of Nintendo Japan in Kyoto and was connected to a Mr. Kobayashi. I described the technology to Mr. Kobayashi and asked whether I could send additional materials regarding the invention. He agreed and provided his email address. I then emailed Mr. Kobayashi, referencing our conversation, offering to discuss an license arrangement with Nintendo Japan, and enclosing the additional materials, which included information regarding the PCT '216 Application. On June 1, 1999, I received a response from Mr. Kobayashi indicating that the technical staff at Nintendo Japan had considered the proposal, but had no plan on developing new merchandise using the device in the future.

4. On September 7, 1999, the application that issued as the '802 Patent was filed in the United Stated Patent and Trademark Office, as a continuation of the '216 PCT Application, which claims priority to German Patent Application No. 197 09 456.2. On September 23, 2003, the '802 Patent was issued by the U.S. Patent Office.

Analysis of the Wii Balance Board

5. On or around July 2007, I discovered that Nintendo released the Wii Balance Board accessory for the Wii video game console. I acquired the physical Wii Balance Board accessory (S/N BC384771641) and, together with co-inventor Maximilian Klein, performed technical analysis on the Wii Balance Board to prove, among other things, that it comprised a support unit a) that is mounted in a tiltable manner on a base part; and b) that it is mounted on the base part such that it can move in a direction which is parallel to an axis being vertically oriented when the support surface is oriented horizontally, as recited by the claims of the '802 Patent.

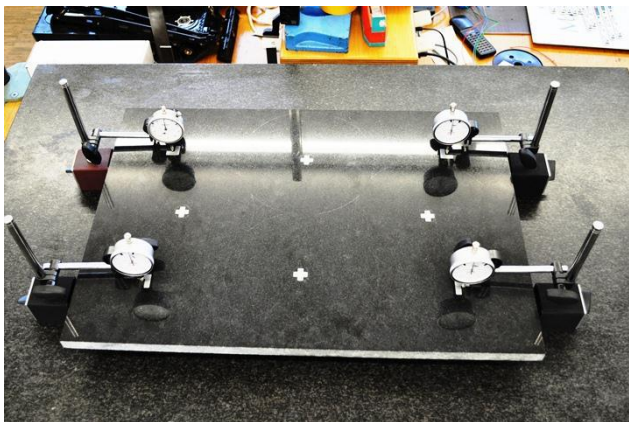
6. We examined the mechanical structure of the Wii Balance Board and determined that it is composed of three main elements: the support unit, spring-elastic elements, and a base part. The support unit element is composed of a steel frame attached to a plastic platform for the user to stand on. The spring-elastic elements are composed of four aluminum bars, each of which is attached at one end to the steel frame and at the other end to a foot plate. The base part is composed of the four foot plates and four plastic foot caps.



7. As a schematic drawing, the main structure of the Wii Balance Board, i.e. the support unit, spring-elastic elements, and the base part, can be depicted as follows:

8. This structure suggests that when an weight is applied to the support unit and distributed approximately equally among the spring-elastic elements, the support unit moves parallel to an axis being vertically oriented when the support surface is oriented horizontally. It also suggests that the support unit tilts when the applied weight is shifted. To verify this, we performed analysis of the actual tilt and parallel movement of the Wii Balance Board.

9. To initially set up the Wii Balance Board for measuring the tilt and parallel movement, we placed it on a granite measuring table to provide a common plane for the base, with a granite measuring plate centered on top of the platform (e.g., support unit) to prevent deflections and partial indentation of the plastic platform. We placed dial indicators on stands simultaneously at four measuring points on the measuring plate (front left, back left, back right, and front right), located above the four corners of the plate. We then calibrated all four dial indicators to zero. With this set up, we were able to measure changes in vertical height at the four measuring points simultaneously to determine changes in the spatial orientation of the measuring plate and Wii Balance Board platform when different weights are applied.



10. To prove vertical movement of the support surface, we measured the height of the measuring plate with various quantities of weights ranging from 0 kg to 100 kg centered thereon. The measuring results showed that the vertical height of the measuring plate is reduced at the same time at all four measuring points and that the vertical height is reduced more when more weight is applied. Interpreting these results, we concluded that the support surface does in fact move parallel to a vertical axis.

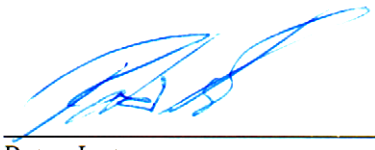
11. To prove tilting movement of the support surface, we measured the height of the measuring plate with various quantities of weights ranging from 0 to 90 kg, distributed to the left, right, front or back sides of the surface. These results proved that the measuring points lie in an approximately horizontal plane when the weight is centered, and lie in another plane that intersects this horizontal plane in a definable degree, i.e. a tilting angle, when the distribution of weight changes. For example, when the weight is shifted to the left side, the support surface lowers at the front left and back left measuring points and rises at the back right and front right measuring points. Likewise, when the weight is sifted to the right side, the support surface lowers at the right measuring points and rises at the left measuring points. Interpreting these results, we concluded that the support unit does in fact tilt to the left side when the applied

weight is shifted to the left side, and tilts to the right side when the applied weight is shifted to the right side. We observed similar front or back tilt when shifting weights to the front or back of the support surface.

12. We completed the technical analysis of vertical and tilting movement of the Nintendo Wii Balance board on July 9, 2012.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 4th day of October, 2013 at Munich, Germany.



Peter Lutz